



DESERT TORTOISE COUNCIL

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Via email only to: nancy_christ@blm.gov

Ms. Nancy Christ, Bureau of Land Management

RE: Harry Allen Solar Energy Center Project Environmental Assessment (NEPA#: DOI-BLM-NV-S010-2014-0125-EA; Case file #: N-93321)

The Desert Tortoise Council (Council) is a private, non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of this species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and Mexico, the Council regularly provides information to individuals, organizations and regulatory agencies on matters potentially affecting the desert tortoise within its historical range.

We appreciate the opportunity to comment on this Environmental Assessment (EA) for the Harry Allen Solar Energy Center Project, File Number: N-93321, by Invenergy Solar Development, LLC. In the following comments, we have excerpted pertinent portions of the EA, which are shown in *italics*, and followed by our comments.

1. Page 1, Section 1.1: In our experience, the Bureau of Land Management (BLM) typically releases a *draft* EA first and a *final* EA later that incorporates comments and makes necessary modifications. Should we consider this EA to be draft or final? Will there be a subsequent (final) EA that incorporates changes that result from these and other comments submitted to the BLM?

2. Page 1, Section 1.1: With regards to the following statement, "*Tiering allows for the preparation of an EA and Finding of No Significant Impact (FONSI) for the Proposed Action ... so long as any significant effects of the individual action were analyzed in the Solar PEIS and any additional effects of the individual action not analyzed in the Solar PEIS are not significant,*" we note on page 44, Section 3.4.4 that "*No SEZ[Solar Energy Zone]-specific design features to address impacts to ACECs were identified in the Final Solar PEIS.*" One of our main concerns is how tortoises in critical habitat within the Coyote Springs ACEC will be affected by translocation of displaced tortoises into that area. Since the Final Solar EIS did not analyze (or foresee?) impacts to the ACEC, where in the EA are specific design features identified and analyzed for their efficacy to minimize impacts of translocated tortoises to resident tortoises within the Coyote Springs ACEC?

3. Page 17, Section 2.2.5.5: Given the following protective measure, “*In addition, geotechnical investigations may occur prior to desert tortoise clearance surveys being completed. It is anticipated that these activities would occur under a limited Notice to Proceed and would require authorized desert tortoise biologists and monitors to be present,*” would it be possible to fit any tortoises discovered during these preliminary surveys with radio transmitters so they may be located later when tortoises are to be removed during the clearance survey? This measure would facilitate finding the tortoises again, and assumes that translocated tortoises would be fit with transmitters for post-translocation monitoring.

4. Page 17, Section 2.2.5.5: With regards to the following statements, “*Desert tortoises would be relocated from the Project in accordance with an approved Desert Tortoise Translocation Plan for the Dry Lake SEZ ... Tortoise would be relocated to a translocation area identified in the approved Desert Tortoise Translocation Plan,*” has this translocation plan already been written? In the text, it is cited as “Ironwood 2014” but in the literature section it is cited as “Ironwood 2014 *In Progress*,” does this mean the plan is not available for review? We understand that portions of the 1,500-acre translocation area are within the Coyote Springs ACEC. Would those portions outside the ACEC be primarily managed for tortoise conservation, or are there foreseeable threats, like future solar projects, that may affect displaced tortoises? Are these translocation areas outside the ACEC within portions of the Solar Energy Zone that may be developed at a later date?

5. Page 32, Table 5: With regards to the following paragraph, “*The project area is not within an ACEC. However, the Project proposes to displace desert tortoises in accordance with an approved translocation plan. A portion of the translocation area selected by the BLM and U.S. Fish and Wildlife Service is within the Coyote Springs ACEC,*” we understand this ACEC is designated as tortoise critical habitat. Is deposition of displaced tortoises into the Coyote Springs ACEC consistent with goals and objectives of the USFWS 2011 revised desert tortoise recovery plan? Was translocation of tortoises into ACECs envisioned and analyzed in the Final Solar PEIS? Has the population to be affected within this ACEC been studied to determine population densities, existing threats, evidence of disease, etc.?

6. Page 44, Section 3.4.4: With regards to the following statement, “*All appropriate and feasible design features outlined in Volume 4, Section 11.3.10.3 and in Section A.2.2 of Appendix A in the PEIS (BLM and DOE 2012) would be implemented,*” we feel that the EA should be required to identify which “appropriate and feasible” measures are to be implemented. Referring to a large document and stating that feasible portions will be implemented does not adequately describe those measures that the proponent plans to implement. For example, if there are 100 measures identified in the Solar PEIS of which you consider only 30 to be “appropriate and feasible,” we would need to know which ones would be implemented to analyze the proponent’s ability to protect tortoises.

7. Page 45, Section 3.4.5.1.2: We note that there is no mention in this portion of the impacts section for the potential to introduce diseased tortoises into the host population. Have disease studies been performed on the tortoises to be translocated and those within the portions of the tortoise critical habitat located within the translocation area?

8. Page 45, Section 3.4.5.1.2: The latter half of the following sentence, “*There is a potential to impact the critical habitat through translocation if it results in exceeding the carrying capacity of the area, **although this impact is likely to be small,***” implies that the carrying capacity of the translocation area is known. How many tortoises currently occur there, how many will be introduced, and how was the carrying capacity of the translocation area determined?

9. Page 45, Section 3.4.5.1.3: Similar to Comment 6 above, we note that Section 3.4.4., which is referenced in this subsection, does not provide the design features that are intended to address impacts to the ACEC; rather it refers to appendices in the Solar PEIS without specifically identifying which measures will be implemented. Do the mitigation measures, for example, require long-term monitoring of displaced tortoises to determine the success of the translocation effort?

10. Page 55, Section 3.7.5.2.1.2 addressing direct and indirect impacts does not mention impacts to tortoises within the ACEC that may be affected by the introduction of translocated tortoises. What is the estimated population of tortoises inside the translocation area and how may they be affected? How does the proponent plan to determine (monitor) the success or failure of translocation within tortoise critical habitat? Will those portions of the translocation area outside the ACEC be subject to development that may affect the translocated tortoises? We find that we are unable to answer any of these questions with the information included in the EA.

11. Page 5, Section 3.7.5.2.1.3: With regards to the following statements, “*To compensate for unavoidable impacts, a per-acre fee was recommended for acres disturbed by this Project. The BLM will decide as part of the decision record for this Project if fees will be collected, and if so, the amount of those fees,*” what makes these fees discretionary? Why is there some potential that they may not be required? The Council feels that, not only should these fees be required, they should be applied to the Coyote Springs ACEC that is most likely to be affected by the proposed action. We note on page 64, Section 3.9.5.1.3 that these fees “will be required,” so perhaps the above wording should be modified in the Final EA?

12. Page 60 and 61, Section 3.9.1: Whereas Table 5 reports that as many as 35 and as few as 6 adult desert tortoises occur on the 717-acre subject property, where are the data indicating how many tortoises occur within the translocation area? We note that the following sentence, “*Desert tortoise surveys were completed for the translocation area between September 8 and October 17, 2014*” indicates the surveys were performed, but where in the EA are the results reported?

13. Page 63, Section 3.9.5.1.2: We see in this section that Ironwood (2014) was cited as the translocation plan to be used for this project. However, that plan was not attached to the EA for our review. At a minimum, we stress that both displaced tortoises and resident tortoises within the translocation area be monitored a sufficient amount of time to determine efficacy of the translocation, and we ask that the results be made available to the Council upon publication. We also believe that any translocated tortoises that subsequently die be tallied against the USFWS’ incidental take statement in the biological opinion issued for this project.

14. Page 64, Section 3.9.5.1.3: We see in the following statement that a Biological Assessment is required: *“Each proposed project within the SEZ boundary will require a Biological Assessment that outlines project actions and avoidance and minimization measures to protect the species.”* Has the BA been completed and is it available for review?

We thank you for the opportunity to review this EA and trust that you will address the comments given above. We also ask that the Desert Tortoise Council be considered an Affected Party for this and other environmental documents affecting tortoises by BLM projects in Nevada. Finally, neither the Biological Assessment nor the Translocation Plan was made available as an attachment or appendix to this EA. Given how much the EA refers to the translocation plan, we find that our ability to effectively analyze the approach is undermined, and we ask that these documents be provided when they become available.

Regards,

A handwritten signature in blue ink, appearing to read 'Ed LaRue, Jr.', is enclosed in a light blue rectangular box.

Edward L., LaRue, Jr., M.S.
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson